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REMARRIAGE AFTER DIVORCE.

THE PRACTICE OF THE ROMAN CHURCH CONTRASTED WITH ITS THEORY.

BY THE RIGHT REV. WILLIAM CROSWELL DOANE, BISHOP OF ALBANY.

THERE is always more or less confusion attendant upon a debate in a large assembly of men accustomed to think and to speak, to teach and to lay down the law; and when the debate is over, the time comes—as on a battlefield, with the smoke cleared away—to count and carry off the dead and wounded, and to see how the battle fared and what its issue really was. Looking back quietly over the discussions and at the decision of the last General Convention on the subject of remarriage after divorce, there are some dead and wounded things to be carried away, never, I think, to return; while there are some who fought and ran away, and some who fought and did not run away, who will live to fight another day. Meanwhile, unsatisfactory as the issue was—because it is a substitution of polity for principle, because it reaches a result by indirectness and implication, not by positiveness and conviction—it certainly marks, in more ways than one, an advance in the direction of stringent guarding of the sacredness of marriage. When I say “principle,” I do not mean what many of us hold, the principle of the indissolubility of marriage, but the principle, which governs very many others, of the sacredness of marriage; and when I say “conviction,” I mean the conviction that the evil of frequent and facile divorce in America must be arrested.

The dead and wounded carried away are, I think, in two classes of what Mr. Gladstone would call “cocksure people.” I do not believe anybody will undertake again to argue on doctrinal grounds about a canon of discipline. I do not believe anybody will presume to say that anywhere the Protestant Episcopal Church has legislated in a disciplinary way that marriage is indis-

soluble. I do not believe anybody will stand up, like Cato, with his "*insuper censeo*" (or, rather, these people say "*insuper scio*"), and say that our Lord plainly allowed remarriage to the innocent party divorced for the adultery of the other. I have not the slightest doubt that an increasing number of people will hold the Prayer-Book teaching, that the Church contemplates the marriage of one woman to one man until they are parted by death; and I have no doubt that a decreasing number of people will believe that adultery dissolves the bond. But I think textual exegesis and individual convictions will play less part hereafter in the discussion. After all, the General Convention is concerned with discipline and not with doctrine. And, however deeply doctrine may enter into our beliefs in connection with marriage, the question of remarriage after divorce is a question of discipline. I want to deal with this great question on this ground. The present canon, passed at the General Convention, virtually contains a doctrinal germ, namely, that adultery dissolves marriage. If a canon had been passed not only forbidding the clergy of the Protestant Episcopal Church to remarry any divorced person, but compelling them to refuse the sacraments after remarriage, that would have contained a doctrinal germ, and it would be, what the present canon is, an interpretation of Scripture and the definite decision of a question which has never yet been decided either by enactment of council, or by consent of scholars, or by uniform and universal catholic use. Just because of this difference for sixteen centuries, because of the division between East and West, because of the difference among manuscripts, because of the disagreement of scholars, the true ground, the safe ground, is the ground of uncertainty; and because of this uncertainty, the Church is free, and I think bound, to say that she will remarry no divorced person on any ground whatever, lest she should go against the Master's will; and also to say that she will not cut off from the sacraments of salvation the one person whose marriage was, perhaps, not positively prohibited by Him.

I know this is called cowardly and inconsistent. It is not cowardly, because true courage is that which "dares do all that may become" a Christian. It is not inconsistent, because it consists with the actual facts of history, as they stand out in the survey of the Church in all the centuries and countries of the world.

Two things need, it seems to me, to be made clear: first, that

no remarriage ought to be solemnized by *any* ecclesiastical body or sanctioned by civil law, except to the innocent party in a suit for adultery. Slowly but surely I believe all the Protestant churches are drawing towards this conclusion. When they reach it, they will at least not have gone beyond the Scriptural ground. And once they reach it, they will be able to influence divorce legislation in the States to this same position. Meanwhile, because no State law can compel, or can do more than allow, a clergyman to officiate, remarriages other than this will have no ecclesiastical sanction.

The other thing which needs clear understanding is the attitude of the Roman Catholic Church upon the whole question. That Church is in a perfectly different position towards this whole subject from any other religious body in the world, because she claims two things: first, the power to annul a marriage, or, rather, to declare it void *ab initio*; and, secondly, the power to dispense with certain hindrances to marriage. Stated in practical terms, the Roman Church both creates and does away with impediments to marriage. I am a bit anxious to make myself clear in regard to this matter. I confess to a feeling of more or less uncertainty about my own position, because, on the one hand, with much kindness of expression, I have been accused of holding the Roman and the Rigorist theory; and, on the other hand, with equal kindness, Roman Catholic laymen and clergymen have questioned the accuracy of a statement which I made in the address to my own Convention, that the Roman Church refused divorce, but "multiplied possibilities of remarriage by innumerable grounds of dispensation and countless definitions of prenuptial sin." It would be more accurate to say "prenuptial impediments."

Now, let us face the facts squarely. Rome takes a tremendous responsibility in both these directions. How does she discharge it? She claims that she does not recognize divorce, and it is claimed for her that she holds as a doctrine that marriage is indissoluble. Technically and in terms this is true; but, to all intents and purposes, there are infinitely more grounds with her for the remarriage of one party with husband or wife still living, than are dreamed of in our theology or in our legislation. Often as divorces are spoken of as occurring in the history of England and of France before the Reformation, they were not dissolutions of the marriage tie, technically speaking, but declarations by the

courts of the Church that the marriage was null and void from the beginning. For instance, when Louis XII of France wanted to get rid of a wife to whom he had been married for twenty-two years, that he might marry a young and wealthy widow, he pleaded with the Pope that his wife was his fourth cousin, that she was deformed, that her father had been his godfather, and the plea was backed by considerations of money, of gifts of land, of a French dukedom to the Pope's illegitimate son, Cardinal Cæsar Borgia; and, within a year, his marriage of twenty-two years was declared never to have been a marriage, a dispensation was granted, and he was, so to speak, married to Anne of Brittany.

There is as striking an instance of this sort of thing in the multi-matrimonial story of Henry VIII of England, who only had to resort to beheading, as a means of getting rid of his wives, in two instances out of the six. No one, of course, apologizes for the bestialities and the brutalities of this famous King; but it seems to me unmistakably clear that he used as a means for gratifying his passions the ecclesiastical system under which he had been trained, and with which (and particularly with the instance just mentioned) he was perfectly familiar. His original marriage to Catherine was a violation not only of the law of the Church, but of the law of God, because she was his brother's widow; but the Pope had dispensed with the law and allowed the marriage, and, in spite of Henry's own protest that it was not lawful, and of opposition both public and private, they were, so to speak, married. And then, because of a flaw in the form of dispensation, or because it was held that the Pope could not dispense with the law of God, the marriage was declared null and void, not by the Pope, but by the Church, along strictly Roman lines. His marriage with Jane Seymour was made possible by a dispensation, Roman though not from Rome, before he beheaded Anne Boleyn; and he married Catherine Howard because, by a dispensation strictly along Roman lines, his marriage with Anne of Cleves was declared null and void, on the ground that he had never given his "inward consent." If it is claimed that the Pope did not grant this dispensation, it must be remembered that, in those days, "*L'église c'est moi*" had not been pronounced, and the secret of the possibility of these performances lay in what I have called the "innumerable grounds of dispensation and countless definitions of prenuptial impediments." The same thing is

true of Napoleon's marriage to Marie Louise of Austria: so far as I can find any full statement of the facts, his marriage with Josephine was annulled by an ecclesiastical council composed of Cardinals and Bishops, on the ground that the nuptial blessing given at the marriage lacked the formalities prescribed by the canon law, namely, the presence of the priest of the parish and of witnesses, with a further reason added, namely, a lack of consent on Napoleon's part. The Archbishop of Vienna performed the proxy marriage in the Church of the Augustines, a dispensation having been granted to allow the ceremony to take place in Lent on the ground of this annulment. Twenty-seven Cardinals were present afterward at the civil ceremony of his marriage at St.-Cloud, but thirteen absented themselves from the religious ceremony which was celebrated afterward, with solemn ceremonial, in the Court Gallery of the Louvre, by the Cardinal Grand Almoner of France, assisted by the Grand Almoner of Italy. And, later on, the baptism of the King of Rome was solemnized in Nôtre Dame by the Cardinal Grand Almoner, twenty Cardinals and one hundred Archbishops and Bishops having been, it is said, present in the sanctuary at the service. And, within our own memory, a dispensation was given by the Pope himself, by means of which the Duke of Aosta married his own niece.

Still more recently, a marriage was made possible in the city of New York by virtually annulling, on technical grounds (that the husband was unbaptized), what had been counted and considered by both parties a perfectly legal marriage. That, of course, was not technically a divorce, but it amounted to the same thing, and was granted upon grounds on which no court in the universe would have thought of a divorce. A case came to my own knowledge, on undoubted authority, of a young girl, a member of the Episcopal Church, who, against the warnings of her parents and her pastor, obtained a divorce on the ground of desertion. She then became engaged to a young Roman Catholic, and, finding that she could not be married in her own Church or by a Roman priest on the strength of that divorce, she was received into the Roman Church, because the priest told her that her marriage was null and void inasmuch as the husband had never been baptized. In the Providence of God the man died before she could marry him, but she took these preliminary steps under Roman advisement and with the marriage by a Roman Catholic priest in view.

Now, when one goes back from concrete instances to abstract facts, I confess one gets confused. I have carefully gone through "The History of the Council of Trent," by Pietro Polano, translated by Nathaniel Brent, published in London in 1620, and also "The Canons and Decrees of the Council of Trent," in Le Plat's edition, published at Antwerp in 1779. And I have also carefully read Gury's "Compendium of Moral Theology," and a book which is called "The Ecclesiastical Dictionary," by the Rev. John Thein, which has the imprimatur of the Roman Catholic Archbishop of New York and the Roman Catholic Archbishop of Cleveland. So that I have done what in me lies to get accurate and authoritative information. Still, I confess myself confused, and convinced of the fact that, when, in controversy, a defender of the Roman system is cornered by one difficulty, he can escape through some other opening. Still, this is what I find, after sitting under a shower of anathemas so thick and so diverse that if one escapes here, one is caught there. One is anathematized by Trent, who denies that marriage is one of the seven sacraments instituted by Christ Himself; who advocates polygamy; who asserts that the Church cannot dispense from or add to the Levitical prohibitions by decreeing diriment impediments, or that a marriage celebrated but not consummated cannot be dissolved by a solemn profession of religion by either of the parties; or who says that the Church has erred in saying that the bond cannot be dissolved by the adultery of either party and that the innocent party cannot be remarried, or that the Church has erred in allowing separation for many causes from bed and board; or who says that the clergy or the members of religious orders can marry if they find that they have not the gift of chastity; or who says that the married estate is to be preferred to the celibate estate; or who says that the prohibition of solemnization of marriage at certain times of the year is superstitious and tyrannical; or who condemns the benedictions and other ceremonies which the Church uses; or who says that matrimonial causes do not belong to ecclesiastical tribunals. It seems pretty difficult to escape from being anathematized under some one or other of these various heads.

In Thein's "Ecclesiastical Dictionary," I find the following statements, which show, among other things, how extremely difficult it is to bring home even a statement of fact in regard to the Roman attitude towards this question of divorce:

"Even in the West, we must admit there has been more than once, in several countries, especially in epochs of ignorance or moral weakness, unfortunate retrogressions in handling this question of divorce. Through ignorance or through condescension to the often violent demands of the powerful, several writers, several prelates, even several particular councils have sanctioned or permitted divorce in case of adultery. But history proves that it was always against the will of the Apostolic See. The Pope never ceased to maintain the sacred indissolubility of the family, not as subservient to his own fancies or interests, but according to the laws and rights which he received from God and the Apostles through tradition. Indeed, tradition grants to the Roman pontiff the right to dissolve under certain circumstances a marriage contracted in right but not confirmed by fact: and tradition grants the same pontifical power to absolve from the solemn vows of profession made in a religious order. Let us remark, however, these are very peculiar cases and very rare, five or six perhaps per year in the entire world. There are, it must be again admitted, cases of nullity which, duly established by ecclesiastical authority after very rigorous inquiry, lead to sentence of separation, not of divorce, because the marriage never did exist. These cases are equally rare."

And at the close of the article comes this paragraph:

"The few failings which were noted from 1803 to 1805 in some French officialties, especially in that of Paris, on the subject of the divorce of Napoleon I, have absolutely nothing to do with the matter. Rome never had anything to do with the second union of the Emperor. And Pope Leo X in his Encyclical '*Arcanum*,' of February 19, 1880, affirms that Pius VII most courageously resisted Napoleon, who, exalted by his successes and by the grandeur of his empire, was deaf to the commands of the pontiff; and Pius VII himself, in 1813, writing to Josephine, Napoleon's first wife, says to her, in speaking of the Emperor, 'Your husband.'"

And then follows, in the same "Ecclesiastical Dictionary" from which I have quoted, this list of diriment impediments which nullify a marriage:

"Clandestine marriage without the presence of the authorized priest and two witnesses; lack of reason or proper age; the solemn vows of chastity implicitly contained in the reception of the subdiaconate, the diaconate and priesthood, and taken by members of religious orders; proximity of relationship; disparity of religion between a Catholic and an infidel; absence of free consent, that is, when marriage is forced on any one by violence or unjust menace of a serious nature, fraud, error, etc."

The important question, it seems to me, is not the ability of Rome to defend herself against merely verbal criticisms, but the

impossibility of defence against the immoralities resulting from the definitions of impediments, the declarations of nullity and the dispensations for marriage afterward, often only discovered and declared, and used as reasons and excuses for getting rid of an unhappy marriage and finding a way for entering upon another. Even if the fifteen diriment impediments are reduced to eight or nine, there is much room for most dangerous use of them: the introduction, for instance, of spiritual affinity by which sponsors cannot marry their godchildren, nor parents marry the sponsors of the child nor the person who baptizes it; the definition of clandestinity in force in certain places in the United States, making a marriage invalid without the presence of the parish priest and two witnesses. And again, whatever ruling the Church might make or has made against the marriage of converts to heathen, and however delicate and difficult the question is, historically speaking, about the marriage of the unbaptized, the declaration that a marriage between a baptized and an unbaptized person is null and void, used, as it was used a year ago in New York, may be and has been as grave a scandal as any of the divorces among people prominent in social circles.

Dealing, then, not with abstract theories, but with the concrete practical problem here in America, it seems to me really true to say that Rome justifies and practically sanctions what amounts to divorce, although it is not called so, in the freest possible way, unless both parties to the previous marriage are Roman Catholics.

According to the Roman Church, marriage being a sacrament, and no one being able to receive the grace of a sacrament unless he is a Catholic Christian, it follows that the marriages of persons who are not Roman Catholics are not sacramental and have no sacramental grace or sanctity connected with them. They are simply legal contracts which the law creates and which the same law can dissolve. Some Roman theologians hold that, if both parties are baptized, their marriage is Christian marriage, though they have no grace of the sacrament unless they are Roman Catholics; but the modern Roman fashion is to rebaptize all converts to Romanism, and so to invalidate all baptism but Roman baptism. So that even when both parties to a marriage are baptized persons, unless they are both Roman Catholics, the marriage is merely a legal contract. Whatever difference there may be as to the theory, the practical fact is that Rome regards

as dissoluble the marriages of all unbaptized persons, marriages between an unbaptized person and a baptized Christian who is not a Roman Catholic, marriages between a Roman Catholic and a non-Romanist, baptized or unbaptized, which has been contracted without dispensation. If this is true, and I believe it cannot be denied, it certainly follows that Rome cannot proclaim herself as the special guardian of the institution of marriage.

Gury's "Compendium of Moral Theology" contains 110 pages, closely printed in double columns, on marriage, 42 dealing with impediments and 15 with dispensations. They do not, of course, differ in statement from the other authorities, but in the application and elaborate explanation of these statements some curious things occur. He gives the fifteen diriment impediments, "*in versibus expressa*," explained and commented on at great length, opening innumerable opportunities for the parting and remarrying of people; and he winds up a list of just causes for dispensation from these impediments with twelve instances, three of them certainly somewhat suggestive, namely, "*excellentia meritorum erga Ecclesiam, conservatio honorum in illustri familia, larga eleemosyna in pia opera refundenda.*"

Thein speaks of these questionable dispensations as very infrequent. But Dr. Fulton sustains a statement which he makes—"The Court of Rome, for a sufficient fee, not only allows marriage with a deceased wife's sister, but, while it professes to prohibit marriage with a third cousin's widow, as we say, it readily permits any man who can afford the stipulated fee to marry his niece or even his aunt,"—with this note, which he quotes from Smith's "Dictionary of Christian Antiquities": "Under the shadow of the system of dispensations, the practice of marriage with nieces and sisters-in-law has become once more not infrequent." Cardinal Guibert, complaining that the infractions of the rules as to intermarrying within the prohibited degrees have become alarming in their number, says: "Marriages between uncles and nieces, between brothers-in-law and sisters-in-law, which used to be unknown or almost unknown, have multiplied in these latter times to a degree which stuns us, inasmuch as it is a grievous weakening of the practice of the Christian faith." The Archbishop can complain of the evil, but he cannot overcome it, and he acknowledges that this state of things is worse in the rest of France than in Paris.

The late Bishop of London, Creighton, in presenting a report of the Committee of Convocation on Divorce says:

"Attempts to take the letter of the mediæval law, and to infer from it that there was a corresponding practice, are very often exceedingly misleading. It is not that the Church at any period whatever had any doubt that marriage was indissoluble, but it seems to me that there is no point upon which the Western Church displayed such incompetence (for I can call it by no other name) as its dealing with the question of marriage. Marriage was a matter which was left entirely in the hands of the Church. Ultimately, as a matter of fact, the State had to interpose because the Church had reduced matters to such extraordinary confusion. While it is perfectly true to say that a valid marriage properly contracted was indissoluble, yet, during the greater part of the Middle Ages, it was almost impossible to say what a valid marriage was and how a valid marriage could be contracted."

Really the expression used by the present Bishop of Bristol, Dr. Brown, is none too strong: "The artificial barriers to marriage which needed the Pope's dispensation were so numerous and so complicated that the lawyers must have been dull who could not find some excuse for getting a marriage declared void because of the absence of dispensation." A modern historian, once himself a Roman Catholic, has put the matter thus flippantly but not untruly: "The emperors, kings and dukes kept an Italian conjurer to turn wrong into right. The conjurer could legalize illegal marriages, and if they turned out ill, he could unmake them."

I am quite aware that this paper is open to criticism, to controversy and to contradiction. I honestly believe that, so far as the practical effect of Rome's dealing with the whole question is concerned, whatever honor must be paid to the broad declaration which Trent made about the indissolubility of marriage, history has shown, in the past and in the present, that what I said is true, that "the multiplied possibilities of remarriage by innumerable grounds of dispensation and countless definitions of prenuptial impediment" dilute, if they do not destroy, the value of the declaration, and are equivalent to the non-Roman or "Protestant recognition of divorce from the bond.

WM. CROSWELL DOANE.